

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #3	CCRB Case #: 201909470	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/21/2019 11:30 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 73	18 Mo. SOL 4/21/2021	EO SOL 12/6/2021	
Date/Time CV Reported Wed, 10/30/2019 11:21 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/30/2019 11:21 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Ramirez	22014	946143	PBBN SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Zul Chowdhury	03491	948780	073 PCT
2. POM Justin Vazquez	25942	964335	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Ramirez	Abuse: Police Officer Brian Ramirez stopped § 87(2)(b)	
B.POM Brian Ramirez	Abuse: Police Officer Brian Ramirez stopped § 87(2)(b)	
C.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	
D.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	
E.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	
F.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	
G.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	
H.POM Brian Ramirez	Abuse: Police Officer Brian Ramirez refused to provide his shield number to § 87(2)(b)	
I.POM Brian Ramirez	Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b)	

Case Summary

On October 22, 2019, § 87(2)(b) filed this complaint with IAB, generating original log #2019-38489. The CCRB received this complaint on October 30, 2019.

On October 21, 2019, at approximately 11:30 P.M., PO Brian Ramirez, Sgt. Zul Chowdhury, and PO Justin Vazquez, all assigned to the 73rd Precinct, were patrolling the area of Lott Avenue and Powell Avenue in Brooklyn in an unmarked police vehicle. PO Ramirez has since been reassigned to Patrol Borough Brooklyn North Specialized Unit. In front of § 87(2)(b) PO Ramirez observed a parked Ford Mustang with closed tinted windows and its engine running, in which § 87(2)(b) and § 87(2)(b) were sitting. PO Ramirez allegedly pulled up alongside the vehicle so that his driver's window aligned with § 87(2)(b)'s back passenger window, blocking § 87(2)(b)'s vehicle from driving away (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). During the encounter, PO Ramirez allegedly stated, "We're over here looking for fucking robbers" (**Allegation C: Discourtesy, § 87(2)(g)**). After § 87(2)(b) asked PO Ramirez if he was being questioned because he was black, PO Ramirez allegedly responded, "Shut the fuck up. I didn't say anything about you being black. I didn't know you were fucking black before I stopped. Go get a real job," (**Allegations D, E, and F: Discourtesy, § 87(2)(g)**). § 87(2)(b) asked PO Ramirez for his shield number, and PO Ramirez allegedly responded, "I'm not giving you my fucking badge number," (**Allegation G: Discourtesy, § 87(2)(g)**; **Allegation H: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) then told PO Ramirez that he wanted to speak with his supervisor, and PO Ramirez allegedly responded, "I'm not calling no fucking body," (**Allegation I: Discourtesy, § 87(2)(g)**). No arrests were made, and no summonses were issued in relation to this incident.

Patrol Borough Brooklyn North conducted a separate investigation into this incident in which PO Ramirez was the subject officer and Sgt. Chowdhury and PO Vazquez were witness officers (**01 Board Review**). The Borough investigated the following allegations: racial profiling, a violation of other department rules by allegedly shining a flashlight in § 87(2)(b)'s eyes and telling him to get a job, and a failure to provide name or shield. All allegations were closed as unsubstantiated.

The investigation did not obtain video footage of this incident. § 87(2)(g)

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Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Brian Ramirez stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Brian Ramirez stopped § 87(2)(b)

It is undisputed that on October 21, 2019, at approximately 11:30 P.M., § 87(2)(b) and § 87(2)(b) were sitting inside § 87(2)(b)'s two-door Ford Mustang in front of their

residence at § 87(2)(b) in Brooklyn. The vehicle was parked on the left side of the one-way street with its motor running and windows closed. § 87(2)(b) was in the driver's seat, closer to the sidewalk, and § 87(2)(b) was in the front passenger's seat, closer to the road. The vehicle's windows were tinted to a degree that it was not possible to see inside of the vehicle at night. Further undisputed is that PO Ramirez, who was driving an unmarked police sedan in which Sgt. Chowdhury and PO Vazquez were passengers, pulled up alongside § 87(2)(b)'s vehicle and initiated an encounter with him and § 87(2)(b). During the encounter, PO Ramirez and § 87(2)(b) conversed, while Sgt. Chowdhury and PO Vazquez said nothing to either civilian. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that he first saw the police vehicle when it began to follow him on Lott Avenue, two blocks away from Powell Street **(03 Board Review)**. When § 87(2)(b) turned onto Powell, the police vehicle stopped following him. A few minutes later, when he was parked in front of his house, the same police vehicle drove past him and backed up so that its driver's window was aligned with § 87(2)(b)'s back passenger window. § 87(2)(b) believed but was not certain that the positioning of the police vehicle made it impossible for him to maneuver out of the spot and drive away. § 87(2)(b) rolled down his passenger window and asked PO Ramirez if he could help him. PO Ramirez asked § 87(2)(b) what he was doing there. § 87(2)(b) stated that he did not have to answer the question unless PO Ramirez was there to investigate him. PO Ramirez stated that there had been break-ins in the area and that he and the other officers were looking for robbers. The tone of PO Ramirez's voice made § 87(2)(b) feel that he was not free to leave. § 87(2)(b) told § 87(2)(b) that she was going to get out of the vehicle and go into their house. § 87(2)(b) told her not to do so because he was worried about how PO Ramirez would react. Toward the end of the encounter, PO Ramirez shined a flashlight in § 87(2)(b)'s face. The entire interaction lasted approximately seven to 10 minutes.

In an unverified phone statement, § 87(2)(b) stated that the encounter began when she looked to her right and saw PO Ramirez shining a bright light into her and § 87(2)(b)'s faces **(04 Board Review)**. § 87(2)(b) then lowered § 87(2)(b)'s window and both she and § 87(2)(b) asked PO Ramirez what the problem was. In an aggressive tone, PO Ramirez asked what they were doing, to which they responded that they were talking. § 87(2)(b) did not feel that she could leave due to the tone of PO Ramirez's voice and the flashlight he was pointing in her face. PO Ramirez stated that there had been some robberies in the area and asked whether § 87(2)(b) and § 87(2)(b) lived in the house in front of which they were parked. § 87(2)(b) and § 87(2)(b) stated that they lived there. § 87(2)(b) then told PO Ramirez that officers always harassed him and stated that PO Ramirez was only questioning them because of his nice vehicle.

During his first CCRB interview, PO Ramirez testified that § 87(2)(b)'s car caught his attention because its windows were tinted to such an extent that he could not see inside of it **(05 Board Review)**. This was the first time he saw the vehicle that night. He pulled alongside the vehicle because the block was a "high crime area" in which the NYPD had received many complaints from homeowners on the block about prostitution, people breaking into vehicles, shootings, and people littering in front of the houses. He further stated that he had pulled up alongside the vehicle to make sure that everything was okay inside the vehicle. His window was parallel with § 87(2)(b)'s window and there was enough room for § 87(2)(b) to pull out of the spot by driving forward. § 87(2)(b)'s vehicle was parked beside a fire hydrant, but the officers did not have any conversation about or intent to enforce the vehicle traffic law violation regarding the fire hydrant or the tinted windows. PO Ramirez and his partners were not investigating any specific crimes that night and he did not believe the occupants of the vehicle were committing a crime. During the

interaction, PO Ramirez asked § 87(2)(b) and § 87(2)(b) if everything was okay. § 87(2)(b) then allegedly cursed at PO Ramirez, stated that PO Ramirez had only initiated the encounter because he saw a black man driving a nice car, and called PO Ramirez a “racist pig.” PO Ramirez did not recall if he told § 87(2)(b) that he was in the area looking for robbers. He did not suspect § 87(2)(b) or § 87(2)(b) of being robbers. Sgt. Chowdhury told PO Ramirez to leave. PO Ramirez stated, “You know something? Have a good night.” He then drove away. The interaction lasted no more than 10 seconds and both § 87(2)(b) and § 87(2)(b) were free to leave at any time.

During his second CCRB interview, PO Ramirez stated that the only reason § 87(2)(b)'s vehicle caught his attention was the fact that it was parked with its motor running and had tinted windows so dark that he could not see inside (**06 Board Review**). His intent in initiating the encounter was to inquire if everything was okay, to see who was in the vehicle, and to see what was going on. The fact that the area was a high prostitution area did not have anything to do with his initiating the encounter. Although his ceasefire assignment involved looking for gang members, PO Ramirez did not have any indication that the occupants of the vehicle may have been gang members, nor did he have any reason to suspect them of criminal activities. PO Ramirez stated that pulling up alongside vehicles with tinted windows was something that he typically did as part of the ceasefire assignment. He stated that the assignment involved patrolling the area for anything that looked out of place. He further noted that the area was drug prone and had a robbery pattern. PO Ramirez did not recall if he had his flashlight out during the encounter or if he shined it in § 87(2)(b)'s or § 87(2)(b)'s faces.

During his CCRB interview, Sgt. Chowdhury testified that nothing specific was going on at the time of the incident (**07 Board Review**). Rather, the officers were just driving around to make sure everything was okay in the area. To do this, they looked at each vehicle parked on the side of the road to make sure no one inside was doing something they were not supposed to do. Sgt. Chowdhury did not recall if there were any reports of criminal activity in the area at the time. Sgt. Chowdhury did not know what drew PO Ramirez's attention to § 87(2)(b)'s vehicle, nor did he have any conversations with him prior to his initiation of the encounter. Sgt. Chowdhury believed that PO Ramirez pulled alongside the vehicle only because it was idling. PO Ramirez was not enforcing the window tinting violation and no officer mentioned anything about the tinting. PO Ramirez pulled alongside § 87(2)(b)'s vehicle so that the police vehicle's driver's window was parallel to § 87(2)(b)'s window. Sgt. Chowdhury did not recall if § 87(2)(b) could have maneuvered out of the spot and driven away. Sgt. Chowdhury stated that PO Ramirez did not tell § 87(2)(b) that they were in the area looking for robbers. Sgt. Chowdhury noted that there was no reason to suspect either civilian of being a robber or committing a crime. During the encounter, PO Ramirez stated, “Hey, is everything okay?” He then stated, “No, I’m just checking to make sure everything is good,” and “All right. Have a good night.” Sgt. Chowdhury could not hear the civilians' responses. The interaction lasted for a matter of seconds, during which time § 87(2)(b) and § 87(2)(b) were free to leave. Sgt. Chowdhury noted that officers are permitted to drive around and look inside vehicles for criminality.

During his CCRB interview, PO Vazquez testified that he did not recall if there was anything occurring in the area at the time that would have given officers reason to suspect something may have been wrong inside § 87(2)(b)'s vehicle (**08 Board Review**). The officers were not looking for robbers at the time. PO Vazquez believed that the only reason to pull up beside the vehicle was to check if everything was okay since the vehicle was on and the windows were tinted. He noted that besides the window tinting and the fact that the vehicle was on, there was nothing unusual about it. PO Vazquez stated that there was no reason to believe § 87(2)(b) or § 87(2)(b) had committed or were committing any crimes. PO Vazquez further stated that PO Ramirez positioned

the police vehicle so that there was room for § 87(2)(b) to maneuver out of the spot and drive away. During the encounter, PO Ramirez asked if everything was all right and did not say anything else. The tone of the conversation remained calm. PO Vazquez could not hear how, if at all, the civilians responded. PO Vazquez did not hear PO Ramirez tell § 87(2)(b) that the officers were in the area looking for robbers. The interaction lasted for a couple of seconds, during which time both civilians were free to leave.

NYPD Event D19102126764 shows that, at 9:54 P.M., officers responded to 515 Christopher Avenue regarding a robbery that occurred at Sackman Street and Newport Street (**09 Board Review**). Both locations are within 0.1 miles of where § 87(2)(b) was parked. The event was closed at 12:17 A.M. as other report prepared with no arrest. According to the Event Unit Information, responding units were both assigned to the 73rd Precinct and included Response Auto for Sector C and a Sergeant unit. PO Ramirez, PO Vazquez, and Sgt. Chowdhury's unit did not respond to the incident.

The investigation obtained surveillance footage from a private camera located at 279 Lott Avenue, two blocks away from the corner of Powell Avenue (**10 Board Review**). The camera is located along the route that § 87(2)(b) testified he took, and where PO Ramirez's vehicle allegedly began following him. At 21:06 minutes in this footage, which corresponds to 11:30 P.M., a vehicle that appears to be § 87(2)(b) s drives past. A dark-colored vehicle drives close behind it. From the footage, it is not clear whether the second vehicle is a police vehicle and whether it is a sedan or an SUV.

The AVL log for vehicle § 87(2)(b), to which PO Ramirez, Sgt. Chowdhury, and PO Vazquez were assigned on October 21, 2019, shows that they stopped next door to the robbery location for 41 seconds at 10:50 P.M., while officers were responding to the event (**11 Board Review**). They do not otherwise spend time at that location. The log also shows that they were several blocks away from 279 Lott Avenue at 11:30 P.M., making clear that they were not following § 87(2)(b) s vehicle prior to the incident. Finally, the log shows that they were stopped in front of § 87(2)(b) for 58 seconds beginning at 11:36 P.M., before continuing down the block to § 87(2)(b).

NYPD Patrol Guide 212-11 requires that investigative encounters are guided by the levels established in the case of *People v. De Bour* (**12 Board Review**). These levels include a "request for information," or Level 1 encounter, in which an officer "must have an objective credible reason" or "more than a hunch or whim" that they should approach the individual for public safety, public service, or law enforcement reasons. During the encounter, the civilian is free to leave and the officer's objective is to gather information rather than focus on the person as a potential subject. As such, the officer may ask relevant non-accusatory questions only and "may not create a situation (either by words or actions) where a reasonable person would not feel free to leave." This contrasts with a Level 2, or "common law right of inquiry" encounter, in which an officer must have a "founded suspicion" of criminality "based on observable conduct or reliable hearsay information." During a Level 2 encounter, officers may ask pointed or accusatory questions, but the person is free to refuse to answer or to leave. Thus, as in a Level 1 encounter, officers may "not create a situation (either by words or actions) where a reasonable person would not feel free to walk away." A Level 3 encounter, or "Terry Stop," on the other hand is conducted when an officer has "reasonable suspicion," or an articulable, "particularized and objective basis for suspecting the person [...] of criminal conduct." Terry Stops are those in which civilians are not free to leave and in which "a reasonable person would not feel free to disregard the officer and walk away."

According to People v. Cintron, 125 A.D.3d 1333, it is well established that “[t]he approach of occupants of a stopped or parked vehicle to request information is analyzed under the first tier of the De Bour hierarchy...and need only be justified by ‘an articulable basis,’ meaning an ‘objective, credible reason not necessarily indicative of criminality’” (13 Board Review). This established precedent is in part predicated on the fact that “there is no evidence that the driver’s ability to move the vehicle was blocked by any patrol vehicles.”

In People v. Phillips, 119 A.D.2d 773, the court held that when a state trooper drove up to a vehicle and blocked it in so that the driver could not drive away, the trooper’s action “was a seizure under the Fourth Amendment” (14 Board Review).

§ 87(2)(g)

[REDACTED]

Allegation (C) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

Allegation (D) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

Allegation (E) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

Allegation (F) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

Allegation (G) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

Allegation (H) Abuse of Authority: Police Officer Brian Ramirez refused to provide his shield number to § 87(2)(b) [REDACTED]

Allegation (I) Discourtesy: Police Officer Brian Ramirez spoke discourteously to § 87(2)(b) [REDACTED]

In his verified statement, § 87(2)(b) [REDACTED] testified that during the encounter, PO Ramirez stated, “We’re over here looking for fucking robbers” (03 Board Review). When § 87(2)(b) [REDACTED] asked PO Ramirez if he was questioning him because he was black, PO Ramirez then stated, “Shut the fuck

up. I didn't say anything about you being black. I didn't know you were fucking black before I stopped you. Go get a real job." § 87(2)(b) then asked him for his shield number, to which PO Ramirez responded, "I'm not giving you my fucking badge number," while shining his flashlight in § 87(2)(b)'s eyes. § 87(2)(b) then stated that he wanted to speak with PO Ramirez's "watch commander," and PO Ramirez responded, "I'm not calling no fucking body." PO Ramirez then drove away.

In her phone statement, § 87(2)(b) stated that PO Ramirez called § 87(2)(b)'s vehicle a "piece of shit" and told him to get a job **(04 Board Review)**. § 87(2)(b) did not recall PO Ramirez using any additional profanity during the incident. In her statement, she did not mention § 87(2)(b) asking for a shield number or PO Ramirez refusing to provide it.

During his first CCRB interview, PO Ramirez stated that he did not use profanity during the encounter and did not make any of the specific discourteous statements that § 87(2)(b) and § 87(2)(b) alleged **(05 Board Review)**. He further stated that § 87(2)(b) did not ask him for his shield number, and he did not refuse to provide it.

In their CCRB interviews, Sgt. Chowdhury and PO Vazquez both testified that they had not heard PO Ramirez make any of the discourteous statements that § 87(2)(b) and § 87(2)(b) alleged **(07-08 Board Review)**. Both officers also stated that they did not hear either civilian request PO Ramirez's shield number and did not hear PO Ramirez refuse to provide it.

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Civilian and Officer CCRB Histories

- This is the first complaint to which either § 87(2)(b) or § 87(2)(b) has been a party **(15-16 Board Review)**.
- PO Ramirez has been a member of service for 13 years and has been a subject in 11 other cases and 31 other allegations, none of which were substantiated. PO Ramirez is a subject in three open cases:
 - Case 202003377 involves abuse of authority allegations, including a stop, a threat of arrest, a detainment, and photographing the victim.
 - Case 202002456 involves a force allegation.
 - Case 202002419 involves abuse of authority allegations for a stop, search of person, and failure to provide a business card.
 - PO Ramirez's CCRB history shows that he has five previous stop allegations and four previous discourtesy allegations, none of which were substantiated.
- On May 6, 2021, the New York City Office of the Comptroller confirmed that neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim regarding this incident **(17-18 Board Review)**.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration, neither § 87(2)(b) nor § 87(2)(b) has a history of criminal convictions in New York City **(19-20 Board Review)**.

Squad No.: 3

Investigator: Rachel Adler Investigator Rachel Adler 5/14/2021
Signature Print Title & Name Date

Squad Leader: Olga Golub SL Olga Golub 5/14/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date